

CHAPTER NO. 889

HOUSE BILL NO. 1512

By Representatives Patton, Buck, Boyer, Givens, West, Kerr, Bone, Black, Sharp, Larry Turner, David Davis, Kernell, Newton, Ralph Cole, Whitson, Ridgeway, Dunn, Eckles, Hargett, McDaniel, Armstrong, Caldwell, Pinion, Godsey, Hood, Bowers

Substituted for: Senate Bill No. 1885

By Senators Harper, Fowler, Crowe, Henry, Ramsey, Person, Haynes, Cooper, Haun, Burks

AN ACT to amend Tennessee Code Annotated, Title 36, Chapter 6, relative to parenting plans.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 36, Chapter 6, Part 4, is amended by deleting the part in its entirety and by substituting instead the following:

36-6-401. Findings.

(a) Parents have the responsibility to make decisions and perform other parental duties necessary for the care and growth of their minor children. In any proceeding between parents under this chapter, the best interests of the child shall be the standard by which the court determines and allocates the parties' parental responsibilities. The General Assembly recognizes the detrimental effect of divorce on many children and that divorce, by its nature, means that neither parent will have the same access to the child as would have been possible had they been able to maintain an intact family. The General Assembly finds the need for stability and consistency in children's lives. The General Assembly also has an interest in educating parents concerning the impact of divorce on children. The General Assembly recognizes the fundamental importance of the parent-child relationship to the welfare of the child, and the relationship between the child and each parent should be fostered unless inconsistent with the child's best interests. The best interests of the child are served by a parenting arrangement that best maintains a child's emotional growth, health and stability, and physical care.

(b) The General Assembly finds that mothers and fathers in families are the backbone of this State and this Nation. They teach children right from wrong, respect for others, and the value of working hard to make a good life for themselves and for their future families. Most children do best when they receive the emotional and financial support of both parents. The General Assembly finds that a different approach to dispute resolution in child custody and visitation matters is useful.

36-6-402. Definitions.

As used in this part, unless the context requires otherwise:

(1) "Dispute resolution" means the mediation process or alternative dispute resolution process in accordance with Supreme Court Rule 31 unless the

parties agree otherwise. For the purposes of this part, such process may include: mediation, the neutral party to be chosen by the parties or the court; arbitration, the neutral party to be chosen by the parties or the court; or a mandatory settlement conference presided over by the court or a special master.

(2) "Parenting responsibilities" means those aspects of the parent-child relationship in which the parent makes decisions and performs duties necessary for the care and growth of the child. Parenting responsibilities, the establishment of which is the objective of a Permanent Parenting Plan, include:

(a) Providing for the child's emotional care and stability, including maintaining a loving, stable, consistent, and nurturing relationship with the child and supervising the child to encourage and protect emotional, intellectual, moral, and spiritual development;

(b) Providing for the child's physical care, including attending to the daily needs of the child, such as feeding, clothing, physical care, and grooming, supervision, health care, and day care, and engaging in other activities which are appropriate to the developmental level of the child and that are within the social and economic circumstances of the particular family;

(c) Providing encouragement and protection of the child's intellectual and moral development, including, attending to adequate education for the child, including remedial or other education essential to the best interests of the child;

(d) Assisting the child in developing and maintaining appropriate interpersonal relationships;

(e) Exercising appropriate judgment regarding the child's welfare, consistent with the child's developmental level and the family's social and economic circumstances; and

(f) Providing any financial security and support of the child in addition to child support obligations.

(3) "Residential schedule" is the schedule of when the child is in each parent's physical care, and it shall designate the primary residential parent; in addition, the residential schedule shall designate in which parent's home each minor child shall reside on given days of the year, including provisions for holidays, birthdays of family members, vacations, and other special occasions, consistent with the criteria of this part, provided that nothing contained herein shall be construed to modify any provision of §36-6-108.

(4) "Permanent parenting plan" means a written plan for the parenting and best interests of the child, including the allocation of parenting responsibilities and the establishment of a Residential Schedule, as well as an award of child support consistent with Title 36, Chapter 5.

(5) "Primary residential parent" means the parent with whom the child resides more than fifty percent (50%) of the time;

(6) "Temporary parenting plan" means a plan for the temporary parenting and the best interests of the child, including the establishment of a temporary residential schedule, and the establishment of temporary financial support designed to maintain the financial status quo to the extent possible, consistent with Title 36, Chapter 5 and the guidelines thereunder.

36-6-403. Requirement of and procedure for determining temporary parenting plan.

(a) Except as may be specifically provided otherwise herein a temporary parenting plan shall be incorporated in any temporary order of the court in actions for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child. A temporary parenting plan shall comply with those provisions for a permanent parenting plan under § 36-6-404(a) that are applicable for the time frame and shall include a residential schedule as described in § 36-6-404(b). The court shall approve a temporary parenting plan as follows:

(1) If the parties can agree to a temporary parenting plan, no written temporary parenting plan is required to be entered; or

(2) If the parties cannot agree to a temporary parenting plan, either or both parties may request the court to order dispute resolution. The court may immediately order the parties to participate in dispute resolution to establish a temporary parenting plan unless one of the restrictions in § 36-6-406(a) exists. If dispute resolution is not available either party may request and the court may order an expedited hearing to establish a temporary parenting plan. In either mediation or in a hearing before the Court each party shall submit a proposed temporary parenting plan and a verified statement of income as defined by Title 36, Chapter 5 and a verified statement that the plan is proposed in good faith and is in the best interest of the child. If only one (1) party files a proposed temporary parenting plan in compliance with this section, that party may petition the court for an order adopting that party's plan by default, upon a finding by the court that the plan is in the child's best interest. In determining whether the proposed temporary parenting plan serves the best interests of the child, the court shall be governed by the allocation of residential time and support obligations contained in the child support guidelines and related provisions in Title 36, Chapter 5.

36-6-404. Requirement of and procedure for determining permanent parenting plan.

(a) Any final decree or decree of modification in an action for absolute divorce, legal separation, annulment, or separate maintenance involving a minor child shall incorporate a Permanent Parenting Plan.

A permanent parenting plan shall:

(1) Provide for the child's changing needs as the child grows and matures, in a way that minimizes the need for further modifications to the permanent parenting plan;

(2) Establish the authority and responsibilities of each parent with respect to the child, consistent with the criteria in this part;

(3) Minimize the child's exposure to harmful parental conflict;

(4) Provide for a process for dispute resolution, before court action, unless precluded or limited by § 36-6-406, provided that state agency cases are excluded from the requirement of dispute resolution as to any child support issue involved. In the process for dispute resolution:

(A) Preference shall be given to carrying out the parenting plan;

(B) The parents shall use the designated process to resolve disputes relating to the implementation of the plan;

(C) A written record shall be prepared of any agreement reached in mediation, arbitration, or settlement conference and shall be provided to each party to be drafted into a consent order of modification;

(D) If the court finds that a parent willfully failed to appear at a scheduled dispute resolution process without good reason, the court may, upon motion, award attorney fees and financial sanctions to the prevailing parent;

(E) The provisions of this subsection shall be set forth in the decree; and

(F) Nothing in this part shall preclude court action, if required to protect the welfare of the child or a party.

(5) Allocate decision-making authority to one or both parties regarding the child's education, health care, extracurricular activities, and religious upbringing. The parties may incorporate an agreement related to the care and growth of the child in these specified areas, or in other areas, into their plan, consistent with the criteria in this part. Regardless of the allocation of decision making in the parenting plan, the parties may agree that either parent may make emergency decisions affecting the health or safety of the child.

(6) Provide that each parent may make the day-to-day decisions regarding the care of the child while the child is residing with that parent.

(7) Provide that when mutual decision making is designated but cannot be achieved, the parties shall make a good-faith effort to resolve the issue through the appropriate dispute resolution process, subject to the exception set forth in subdivision (5)(d)(6) of this section.

(8) Require the obligor to report annually on a date certain to the obligee, and the Department of Human Services or its contractor in Title IV-D cases, on a form provided by the court the obligor's income as defined by the child support guidelines and related provisions contained in Title 36, Chapter 5.

(b) Any permanent parenting plan shall include a residential schedule as defined in § 36-6-402(3). The court shall make residential provisions for each child, consistent with the child's developmental level and the family's social and economic circumstances, which encourage each parent to maintain a loving, stable, and nurturing relationship with the child. The child's residential schedule shall be consistent with this part. If the limitations of § 36-6-406 are not dispositive of the child's residential schedule, the court shall consider the following factors:

(1) The parent's ability to instruct, inspire, and encourage the child to prepare for a life of service, and to compete successfully in the society which the child faces as an adult;

(2) The relative strength, nature, and stability of the child's relationship with each parent, including whether a parent has taken greater responsibility for performing parenting responsibilities relating to the daily needs of the child;

(3) The willingness and ability of each of the parents to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent, consistent with the best interests of the child;

(4) Willful refusal to attend a court-ordered parent education seminar may be considered by the court as evidence of that parent's lack of good faith in these proceedings;

(5) The disposition of each parent to provide the child with food, clothing, medical care, education and other necessary care;

(6) The degree to which a parent has been the primary caregiver, defined as the parent which has taken the greater responsibility for performing parental responsibilities;

(7) The love, affection, and emotional ties existing between each parent and the child;

(8) The emotional needs and developmental level of the child;

(9) The character and physical and emotional fitness of each parent as it relates to his or her ability to parent or the welfare of the child;

(10) The child's interaction and interrelationships with siblings and with significant adults, as well as the child's involvement with his or her physical surroundings, school, or other significant activities;

(11) The importance of continuity in the child's life and the length of time the child has lived in a stable, satisfactory environment;

(12) Evidence of physical or emotional abuse to the child, to the other parent or to any other person;

(13) The character and behavior of any other person who resides in or frequents the home of a parent and such person's interactions with the child;

(14) The reasonable preference of the child if twelve (12) years of age or older. The court may hear the preference of a younger child upon request. The preference of older children should normally be given greater weight than those of younger children;

(15) Each parent's employment schedule, and the court may make accommodations consistent with those schedules; and

(16) Any other factors deemed relevant by the court.

(c) The court shall approve a Permanent Parenting Plan as follows:

(1) Upon agreement of the parties:

(A) with the entry of a final decree or judgment; or

(B) with a consent order to modify a final decree or judgment involving a minor child.

(2) If the parties cannot reach agreement on a permanent parenting plan, upon the motion of either party, or upon its own motion, the court may order appropriate dispute resolution proceedings pursuant to Rule 31 of the Rules of the Supreme Court of Tennessee, to determine a permanent parenting plan.

(3) If the parties have not reached agreement on a permanent parenting plan on or before forty-five (45) days before the date set for trial, each party shall file and serve a proposed permanent parenting plan, even though the parties may continue to mediate or negotiate. Failure to comply by a party may result in the court's adoption of the plan filed by the opposing party if the court finds such plan to be in the best interests of the child. In determining whether the proposed plan is in the best interests of the child, the court may consider the allocation of residential time and support obligations contained in the child support guidelines and related provisions contained in Chapter 5 of this title. Each parent submitting a proposed permanent parenting plan shall attach a verified statement of income pursuant to the child support guidelines and related provisions contained in Title 36, Chapter 5 and a verified statement that the plan is proposed in good faith and is in the best interest of the child.

36-6-405. Modifying permanent parenting plans.

(a) In a proceeding for a modification of a permanent parenting plan, a proposed parenting plan shall be filed and served with the petition for modification and with the response to the petition for modification. Such plan is not required if the modification pertains only to child support. The obligor parent's proposed parenting plan shall be accompanied by a verified statement of that party's income pursuant to the child support

guidelines and related provisions contained in Title 36, Chapter 5. The process established by § 36-6-404 (b) shall be used to establish an amended permanent parenting plan or final decree or judgment.

(b) Title IV-D child support cases involving the Department of Human Services or any of its public or private contractors shall be bifurcated from the remaining parental responsibility issues. Separate orders shall be issued concerning Title IV-D issues, which shall not be contained in, or part of, temporary, permanent or modified parenting plans. The Department of Human Services and its public or private contractors shall not be required to participate in mediation or dispute resolution pursuant to this part.

36-6-406. Restrictions in temporary or permanent parenting plans.

(a) The permanent parenting plan and the mechanism for approval of the permanent parenting plan shall not utilize dispute resolution, and a parent's residential time as provided in the permanent parenting plan or temporary parenting plan shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that a parent has engaged in any of the following conduct:

(1) Willful abandonment that continues for an extended period of time or substantial refusal to perform parenting responsibilities; or

(2) Physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in §36-3-601(1).

(b) The parent's residential time with the child shall be limited if it is determined by the court, based upon a prior order or other reliable evidence, that the parent resides with a person who has engaged in physical or sexual abuse or a pattern of emotional abuse of the parent, child or of another person living with that child as defined in §36-3-601(1).

(c) If a parent has been convicted as an adult of a sexual offense under §39-15-302, Title 39, Chapter 17, Part 10, or §§ 39-13-501 - 39-13-511, or has been found to be a sexual offender under Title 39, Chapter 13, Part 7, the court shall restrain the parent from contact with a child that would otherwise be allowed under this part. If a parent resides with an adult who has been convicted, or with a juvenile who has been adjudicated guilty of a sexual offense under §39-15-302, Title 39, Chapter 17, Part 10, or §§ 39-13-501 - 39-13-511, or who has been found to be a sexual offender under Title 39, Chapter 13, Part 7, the court shall restrain that parent from contact with the child unless the contact occurs outside the adult or juvenile's presence and sufficient provisions are established to protect the child.

(d) A parent's involvement or conduct may have an adverse effect on the child's best interest, and the court may preclude or limit any provisions of a parenting plan, if any of the following limiting factors are found to exist after a hearing:

(1) A parent's neglect or substantial nonperformance of parenting responsibilities;

(2) An emotional or physical impairment which interferes with the parent's performance of parenting responsibilities as defined in § 36-6-402;

(3) An impairment resulting from drug, alcohol, or other substance abuse that interferes with the performance of parenting responsibilities;

(4) The absence or substantial impairment of emotional ties between the parent and the child;

(5) The abusive use of conflict by the parent which creates the danger of damage to the child's psychological development;

(6) A parent has withheld from the other parent access to the child for a protracted period without good cause;

(7) A parent's criminal convictions as they relate to such parent's ability to parent or to the welfare of the child; or

(8) Such other factors or conduct as the court expressly finds adverse to the best interests of the child.

(e) In entering a permanent parenting plan, the court shall not draw any presumptions from the provisions of the temporary parenting plan.

36-6-407. Allocation of parenting responsibilities.

(a) (1) The court shall approve agreements of the parties allocating parenting responsibilities, or specifying rules, if it finds that:

(A) The agreement is consistent with any limitations on a parent's decision-making authority mandated by § 36-6-406;

(B) The agreement is knowing and voluntary; and

(C) The agreement is in the best interest of the child and is agreed to by the guardian ad litem, if one has been appointed by the court.

(2) The court may consider a parent's refusal, without just cause, to attend a court ordered parental educational seminar in making an award of sole decision-making authority to the other parent. The court shall order sole decision-making to one parent when it finds that:

(A) A limitation on the other parent's decision-making authority is mandated by § 36-6-406;

(B) Both parents are opposed to mutual decision making; or

(C) One (1) parent is opposed to mutual decision making, and such opposition is reasonable in light of the parties' inability to satisfy the criteria for mutual decision-making authority.

(3) Except as provided in subdivisions (1) and (2) of this subsection, the court shall consider the following criteria in allocating decision-making authority:

(A) The existence of a limitation under § 36-6-406;

(B) The history of participation of each parent in decision-making in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and whether each parent attended a court ordered parent education seminar;

(C) Whether the parents have demonstrated the ability and desire to cooperate with one another in decision making regarding the child in each of the following areas: physical care, emotional stability, intellectual and moral development, health, education, extracurricular activities, and religion; and

(D) The parents' geographic proximity to one another, to the extent that it affects their ability to make timely mutual decisions.

36-6-408. Parent educational seminar.

(a) In an action where a permanent parenting plan is or will be entered each parent shall attend a parent educational seminar as soon as possible after the filing of the complaint. The seminar shall educate parents concerning how to protect and enhance the child's emotional development and informing the parents regarding the

legal process. The seminar shall also include a discussion of alternative dispute resolution, marriage counseling, the judicial process, and common perpetrator attitudes and conduct involving domestic violence. The program may be divided into sessions, which in the aggregate shall not be less than four (4) hours in duration. The seminar shall be educational in nature and not designed for individual therapy. The minor children shall be excluded from attending these sessions. The requirement of attendance at such a seminar may be waived upon motion by either party and the agreement of the court upon the showing of good cause for such relief.

(b) The fees or costs of the educational sessions under this section, which shall be reasonable, shall be borne by the parties and may be assessed by the court as it deems equitable. Such fees may be waived for indigent persons.

(c) No court shall deny the granting of a divorce from the bonds of matrimony for failure of a party or both parties to attend the educational session.

36-6-409. Procedures and restrictions applicable to dispute resolution.

The following procedures and restrictions are applicable to the use of the dispute resolution process under this part:

(a) Each neutral party, the court, or the special master shall apply or, in the case of mediation, assist the parties to uphold as a standard for making decisions in mediation, the criteria in this part. Nothing in this part shall be construed to prevent a party from having the party's attorney present at a mediation or other dispute resolution procedure.

(b) The Tennessee Rules of Evidence do not apply in any mediation or alternative dispute resolution process; the neutral party may rely upon evidence submitted that reasonably prudent persons would rely upon in the conduct of their affairs.

(c) When dispute resolution is utilized in this chapter, it shall be preceded by a pretrial conference and the attendance by parents at the parent education seminar set forth in §36-6-408.

(d) The court shall not order a dispute resolution process, except court action, if the court:

(1) Finds that any limiting factor under § 36-6-406 applies;

(2) Finds that either parent is unable to afford the cost of the proposed dispute resolution process, unless such cost is waived or subsidized by the State; or

(3) Preempts such process upon motion of either party for just cause.

(e) If an order of protection issued in or recognized by this State is in effect or if there is a court finding of domestic abuse or criminal conviction involving domestic abuse within the marriage which is the subject of the

proceeding for divorce or separate support and maintenance, the court may order mediation or refer the parties to mediation only if:

(1) Mediation is agreed to by the victim of the alleged domestic or family violence;

(2) Mediation is provided by a certified mediator who is trained in domestic and family violence in a specialized manner that protects the safety of the victim; and

(3) The victim is permitted to have in attendance at mediation a supporting person of his or her choice, including, but not limited to, an attorney or advocate. No victim may provide monetary compensation to a non-attorney advocate for attendance at mediation. The other party may also have in attendance at mediation a supporting person of his or her choice, including, but not limited to, an attorney or advocate.

(f) If a dispute resolution process is not precluded or limited, then in designating such a process the court shall consider all relevant factors, including:

(1) Differences between the parents that would substantially inhibit their effective participation in any designated process;

(2) The parents' wishes or agreements and, if the parents have entered into agreements, whether the agreements were made knowingly and voluntarily; and

(3) The financial circumstances of the parties to pay for alternative dispute resolution processes where court sanctioned alternative dispute resolution programs are unavailable.

36-6-410. Designation of custody for the purpose of other state and federal statutes.

Solely for the purpose of all other state and federal statutes and any applicable policies of insurance which require a designation or determination of custody, a parenting plan shall designate the parent with whom the child is scheduled to reside a majority of the time as the custodian of the child; provided, that this designation shall not affect either parent's rights and responsibilities under the parenting plan. In the absence of such a designation, the parent with whom the child is scheduled to reside a majority of the time shall be deemed to be the custodian for the purposes of such federal and state statutes.

36-6-411. Juvenile court jurisdiction.

Nothing in this part shall be construed to alter, modify or restrict the exclusive jurisdiction of the juvenile court pursuant to § 37-1-103.

36-6-412. Gender.

It is the legislative intent that the gender of the party seeking to be the primary residential parent shall not give rise to a presumption of parental fitness or cause a presumption in favor of or against such party.

36-6-413. Funding.

(a) The costs of the mediation required by this part may be assessed as discretionary costs of the action.

(b) (1) For an indigent person, the cost of the mediation and education seminar shall be based on a sliding scale based on a person's ability to pay.

(2) The cost of mediation and education shall be paid from all available federal, state or local funds.

(3) The State Treasurer is authorized and directed to establish within the general fund a fund known as the "divorcing parent education and mediation fund."

(4) Revenue collected in accordance with subsection (2) of this section shall be deposited into the divorcing parent education and mediation fund. Moneys collected under subsection (2) during the pilot project and not expended shall be deposited into the divorcing parent education and mediation fund. Moneys in the fund shall not revert to the general fund of the state, but shall remain available and are to be collected exclusively for providing education and mediation services, and the administration costs of this program.

(5) Moneys in the divorcing parent education and mediation fund shall be allocated annually and distributed to or for the benefit of each judicial district to provide education and mediation for indigent parents, and administration of these services, in such manner as determined by the Administrative Office of the Courts.

36-6-414. Evaluation.

The parenting plan processes established by this part shall be evaluated by the administrative office of the courts after the program has been in effect for three (3) years. The administrative office of the courts shall report to the Committee on Children and Family Affairs of the House of Representatives; the General Welfare, Health and Human Resources Committee of the Senate, the Health and Human Resources Committee of the House of Representatives; and the Judiciary Committees of the House of Representatives and the Senate no later than February 15, 2004.

SECTION 2. This act shall take effect on January 1, 2001, the public welfare requiring it.

PASSED: June 1, 2000

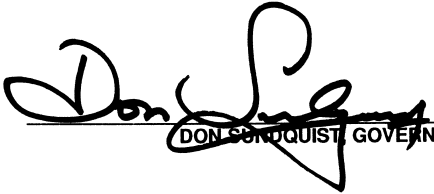


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES



JOHN S. WILDER
SPEAKER OF THE SENATE

APPROVED this 14th day of June 2000



DON SUNDQUIST, GOVERNOR